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10/726,618

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Piero Patrone Bonissone

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EXAMINER

RAJ, RAJIV J

ART UNIT

PAPER NUMBER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/726,618	<b>Applicant(s)</b> BONISSONE ET AL.	
	<b>Examiner</b> RAJIV J. RAJ	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01 May 2008</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Status of Claims**

1. This action is in reply to the application filed on 02 June 2008.
2. Claims 2, 3, 5-8, 10-11 and 14-15 have been amended.
3. Claims 1-18 have been examined in this application.

### **Information Disclosure Statement**

4. The Information Disclosure Statement filed 01 May 2008 has been considered. An initialed copy of the Form 1449 is enclosed herewith.

### **Claim Rejections - 35 USC § 101**

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. In light of Applicant's amendment of claim 5 which now states "*A tangibly embodied computer readable medium executing code for causing a processor to use medication and medical condition information in automated insurance underwriting*", the previous rejection is withdrawn.
6. Claims 1-4 & 17-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such

as a particular apparatus) (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here claims 1-4 & 17-18 fails to meet the above requirements because limitations fail to be tied to another statutory class of invention. Nominal recitations of structure in an otherwise ineligible method fail to make the method a statutory process. See

*Benson*, 409 U.S. at 71-72. As *Comiskey* recognized, "the mere use of the machine to collect data necessary for application of the mental process may not make the claim patentable subject matter." *Comiskey*, 499 F.3d at 1380 (citing *In re Grams*, 888 F.2d 835, 839-40 (Fed. Cir. 1989)).

Incidental physical limitations, such as data gathering, field of use limitations, and post-solution

activity are not enough to convert an abstract idea into a statutory process. In other words,

nominal or token recitations of structure in a method claim do not convert an

otherwise

ineligible

claim into an eligible one.

### **Claim Rejections - 35 USC § 102**

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 3-5, 7-9, 11-13, 15, and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lerner et al. (US 20020087364 A1) (hereinafter Lerner).

**As per claim 1**, Lerner teaches a method for using medication and medical condition information in automated insurance underwriting, the method comprising the steps of:

- *identifying medication information provided by an applicant; identifying medical condition information provided by the applicant; (see at least Lerner [0022] “the server system prompts the user for responses to policy specific questions (e.g., age, sex, state of residence, medical and family history (e.g., history of cancer, heart disease, etc.), current medical condition and lifestyle”)*
- *assessing a consistency between the medication information and the medical condition information; (see at least Lerner [0023] “the server system*

quantitatively assesses and analyzes the information at step 72 to determine an eligibility score or value with respect to the insurability issues of interest.”)

- *making at least one insurance underwriting decision based on the consistency between the medication information and the medical condition information.* (see at least Lerner [0024] “A total risk factor or eligibility score is calculated by adding the individual assessment values assigned to the potential customer at step 162 after review of the medical and application information. This total score represents a comprehensive quantified assessment of the potential customer insurability, and is used to make decisions on whether or not to underwrite a life insurance policy”)

**As per claim 3**, Lerner teaches the steps of:

- *querying a medical knowledge database, the database comprises information associated with a plurality of medications, a plurality of medical conditions, and treatment associations between the plurality of medications and the plurality of medical conditions.* (see at least Lerner [0017] “accessing the server via the network and one or more information systems or databases . . . The information typically includes HMO claims records, medical laboratory test reports and/or computerized results from previous hospital or doctor office examinations. The nature of the particular records stored and accessed may vary widely, depending upon the nature of the insurance or policy desired.”)

**As per claim 4**, Lerner teaches:

- *assigning the applicant to a risk category based on the consistency between the medication information and the medical condition information. (see at least Lerner Fig. 2 Items:56,72 and related text)*

**As per claim 5**, Lerner teaches the steps of:

- *code adapted to identify medication information provided by an applicant; code adapted to identify medical condition information provided by the applicant; (see at least Lerner [0022])*
- *code adapted to assess a consistency between the medication information and the medical condition information; (see at least Lerner [0023])*
- *code adapted to make at least one insurance underwriting decision based on the consistency between the medication information and the medical condition information. (see at least Lerner [0024])*

**As per claim 7**, Lerner teaches the steps of:

- *code adapted to query a medical knowledge database, the database comprises information associated with a plurality of medications, a plurality of medical conditions, and treatment associations between the plurality of medications and the plurality of medical conditions. (see at least Lerner [0017])*

**As per claim 8**, Lerner teaches:

- *code adopted to assign the applicant to a risk category based on the consistency between the medication information and the medical condition information. (see at least Lerner Fig. 2 Items:56,72 and related text)*

**As per claim 9**, Lerner teaches the system comprising:

- *a first identification module identifying medication information provided by an applicant; a second identification module identifying medical condition information provided by the applicant; (see at least Lerner [0022])*
- *a assessment module assessing a consistency between the medication information and the medical condition information; (see at least Lerner [0023])*
- *an insurance module for making at least one insurance underwriting decision based on the consistency between the medication information and the medical condition information. (see at least Lerner [0024])*

**As per claim 11**, Lerner teaches the steps of:

- *a query module for querying a medical knowledge database, the database comprises information associated with a plurality of medications, a plurality of medical conditions, and treatment associations between the plurality of medications and the plurality of medical conditions. (see at least Lerner [0017])*

**As per claim 12**, Lerner teaches:

- *an assignment module for assigning the applicant to a risk category based on the consistency between the medication information and the medical condition information. (see at least Lerner Fig. 2 Items:56,72 and related text)*

**As per claim 13**, Lerner teaches the system comprising:



- *means for identifying medication information provided by an applicant; means for identifying medical condition information provided by the applicant; (see at least Lerner [0022])*
- *means for assessing a consistency between the medication information and the medical condition information; (see at least Lerner [0023])*
- *means for making at least one insurance underwriting decision based on the consistency between the medication information and the medical condition information. (see at least Lerner [0024])*

**As per claim 15**, Lerner teaches the steps of:

- *means for querying a medical knowledge database, the database comprises information associated with a plurality of medications, a plurality of medical conditions, and treatment associations between the plurality of medications and the plurality of medical conditions. (see at least Lerner [0017])*

**As per claim 16**, Lerner teaches:

- *means for assigning the applicant to a risk category based on the consistency between the medication information and the medical condition information. (see at least Lerner Fig. 2 Items:56,72 and related text)*

### **Claim Rejections - 35 USC § 103**

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 2, 6, 10, 14, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerner in view of Joao (US 2001/0032099 A1) (hereinafter Joao).

## **Claim 2**

**Lerner as shown, discloses all the limitations of Claim 1 and the following limitations:**

- *comparing the list with the medical condition information provided by the applicant.* (see at least Lerner [0012] “The computer system retrieves and utilizes this information to produce an underwriting score or value, where information gathered from the potential customer is compared to information within an insurer database.” Wherein the “information gathered from the potential customer” reads on *medical condition information*.)

Lerner does not disclose the following limitations, however Joao, as shown does:

- *generating a list of possibly treated conditions based at least in part on the medication information provided by the applicant; (see at least Joao [0215] “then generate a treatment report which will outline and/or prescribe treatment for the single diagnosis and/or for the list of possible diagnoses, if any. The central processing computer 10, when generating the treatment report, can process same in conjunction with, and consider, possible drug interactions and/or treatment interactions.”)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the limitations taught by Lerner, with *generating a list of possibly treated conditions based at least in part on the medication information provided by the applicant*, as disclosed in Joao. Lerner teaches *comparing the list with the medical condition information provided by the applicant*. Lerner does not explicitly teach *generating a list of possibly treated conditions based at least in part on the medication information provided by the applicant*, however Joao does. Therefore, it would have been obvious to combine Lerner and Joao because a system that creates and compares a list of an applicants' medical information allows for a more efficient way to automatically underwrite insurance that more accurately fit an applicant's medical needs. (see at least Lerner [0012]).

#### **Claim 6**

**Lerner as shown, discloses all the limitations of Claim 5 and the following limitations:**

- *code adapted to compare the list with the medical condition information provided by the applicant. (see at least Lerner [0012])*

Lerner does not disclose the following limitations, however Joao, as shown does:

- *code adapted to generate a list of possibly treated conditions based at least in part on the medication information provided by the applicant; (see at least Joao [0215])*

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the limitations taught by Lerner, with *code adapted to generate a list of possibly treated conditions based at least in part on the medication information provided by the applicant*, as disclosed in Joao. Lerner teaches *code adapted to compare the list with the medical condition information provided by the applicant*. Lerner does not explicitly teach *code adapted to generate a list of possibly treated conditions based at least in part on the medication information provided by the applicant*, however Joao does. Therefore, it would have been obvious to combine Lerner and Joao because “the information available in the medical records and claims is sufficient for the insurer to underwrite the potential customer life insurance policy, the potential customer may obviate the medical examination and/or blood and/or urine tests. Further, if additional medical information is required, the potential customer healthcare provider may conduct an

examination or test, thereby reducing costs for the insurer.” (see at least Lerner [0013]).

### **Claim 10**

**Lerner as shown, discloses all the limitations of Claim 9 and the following limitations:**

- *a comparison module for comparing the list with the medical condition information provided by the applicant. (see at least Lerner [0012])*

Lerner does not disclose the following limitations, however Joao, as shown does:

- *a generation module for generating a list of possibly treated conditions based at least in part on the medication information provided by the applicant; (see at least Joao [0215])*

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the limitations taught by Lerner, with *a generation module for generating a list of possibly treated conditions based at least in part on the medication information provided by the applicant*, as disclosed in Joao. Lerner teaches *a comparison module for comparing the list with the medical condition information provided by the applicant*. Lerner does not explicitly teach *a generation module for generating a list of possibly treated conditions based at least in part on the medication information provided by the applicant*, however Joao does. Therefore, it would have been obvious to combine Lerner and Joao because “the information available in the medical records and claims is sufficient for the insurer to

underwrite the potential customer life insurance policy, the potential customer may obviate the medical examination and/or blood and/or urine tests. Further, if additional medical information is required, the potential customer healthcare provider may conduct an examination or test, thereby reducing costs for the insurer.” (see at least Lerner [0013]).

#### **Claim 14**

**Lerner as shown, discloses all the limitations of Claim 13 and the following limitations:**

- *means for comparing the list with the medical condition information provided by the applicant.* (see at least Lerner [0012])

Lerner does not disclose the following limitations, however Joao, as shown does:

- *means for generating a list of possibly treated conditions based at least in part on the medication information provided by the applicant;* (see at least Joao [0215])

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the limitations taught by Lerner, with *a means for generating a list of possibly treated conditions based at least in part on the medication information provided by the applicant*, as disclosed in Joao. Lerner teaches a *means for comparing the list with the medical condition information provided by the applicant*. Lerner does not explicitly teach a *means for generating a list of possibly treated conditions based at least in part on the medication information provided by the applicant*, however Joao does. Therefore, it would have been obvious to combine

Lerner and Joao because “the information available in the medical records and claims is sufficient for the insurer to underwrite the potential customer life insurance policy, the potential customer may obviate the medical examination and/or blood and/or urine tests. Further, if additional medical information is required, the potential customer healthcare provider may conduct an examination or test, thereby reducing costs for the insurer.” (see at least Lerner [0013]).

#### **Claim 17**

**Lerner as shown, discloses the following limitations:**

- *identifying medication information provided by an applicant; identifying medical condition information provided by the applicant; (see at least Lerner [0022])*
- *assessing a consistency between the medication information and the medical condition information; (see at least Lerner [0023])*
- *making at least one insurance underwriting decision based on the consistency between the medication information and the medical condition information. (see at least Lerner [0024])*
- *comparing the list with the medical condition information provided by the applicant. (see at least Lerner [0012])*
- *the method further comprising querying a medical knowledge database, the database comprises information associated with a plurality of medications, a plurality of medical conditions, and treatment associations between the plurality of medications and the plurality of medical conditions. (see at least Lerner [0017])*

Lerner does not disclose the following limitations, however Joao, as shown does:

- *generating a list of possibly treated conditions based at least in part on the medication information provided by the applicant; (see at least Joao [0215])*

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the limitations taught by Lerner, with *generating a list of possibly treated conditions based at least in part on the medication information provided by the applicant*, as disclosed in Joao. Lerner teaches *identifying medication information provided by an applicant; identifying medical condition information provided by the applicant, assessing a consistency between the medication information and the medical condition information, making at least one insurance underwriting decision based on the consistency between the medication information and the medical condition information, comparing the list with the medical condition information provided by the applicant, and the method further comprising querying a medical knowledge database, the database comprises information associated with a plurality of medications, a plurality of medical conditions, and treatment associations between the plurality of medications and the plurality of medical conditions*. Lerner does not explicitly teach *generating a list of possibly treated conditions based at least in part on the medication information provided by the applicant*, however Joao does. Therefore, it would have been obvious to combine Lerner and Joao because “the information available in the medical records and claims is sufficient for the insurer to underwrite the potential



customer life insurance policy, the potential customer may obviate the medical examination and/or blood and/or urine tests. Further, if additional medical information is required, the potential customer healthcare provider may conduct an examination or test, thereby reducing costs for the insurer.” (see at least Lerner [0013]).

### **Claim 18**

The combination of Lerner/Joao discloses all of the limitations of claim 17. Lerner further discloses the following limitation:

- *assigning the applicant to a risk category based on the consistency between the medication information and the medical condition information.* (see at least Lerner Fig. 2 Items:56,72 and related text)

### **Response to Arguments**

11. Applicant's arguments filed 02 June 2008 have been fully considered but they are not persuasive. The applicant's arguments, addressed in the “Remarks” filed on 02 June 2008, will be responded to.

**As per claim 1**, applicant argues that Lerner does not anticipate “identifying medication information provided by an applicant”. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *“the names of the*

*medications, the amount taken per dosage, the frequency of dosage, the time period for which each medication is taken, etc."* See, e.g., Specification paragraph [0026].) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Also in response to applicant's argument that that: Lerner at best discloses identifying use of tobacco or tobacco related substances by an applicant and fails to disclose, "identifying medication information provided by an applicant"; a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Examiner asserts the invention disclosed in Lerner includes responding to "current medical conditions and lifestyles", and this disclosed invention is capable of "*identifying the medication information provided by an applicant*".

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the names of the medications, the amount take per dosage, the frequency of dosage, the time period for which each medication is take etc." ) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant also argues that Lerner does not anticipate “*assessing a consistency between the medication information and the medical condition information*”. In response to applicant's argument, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Examiner asserts, as the Applicant has conceded, that the invention disclosed in Lerner employs an algorithm to evaluate medical criteria. The Examiner takes the position that this limitation of Lerner is fully capable of “*assessing a consistency between the medication information and the medical condition information*”.

Applicant further argues that Lerner does not anticipate “*making at least one insurance underwriting decision based on the consistency between the medication information and the medical condition information*”. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections. Examiner asserts, as the Applicant has conceded, that the invention disclosed in Lerner discloses making a decision on underwriting insurance. Thus the Examiner takes the position this limitation, disclosed in Lerner, is not patently distinct from applicant's limitation of

*“making at least one insurance underwriting decision based on the consistency between the medical information and the medical condition information.”*

Further in response to applicant's argument, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Examiner asserts, as the Applicant has conceded, that the invention disclosed in Lerner discloses making a decision on underwriting insurance. The Examiner takes the position that this limitation of Lerner is fully capable of *“making at least one insurance underwriting decision based on the consistency between the medical information and the medical condition information”*.

**As per claims 3 and 4**, applicant also makes the same general arguments found in claim 1, and are rejected on the same grounds.

**As per claims 5, 9 and 13**, applicant also makes the same general arguments found in claim 1, and are rejected on the same grounds.

**As per claims 7, 8,11,12,15 and 16**, applicant also makes the same general arguments found in claims 5, 9, and 13, and are rejected on the same grounds.

**As per claim 17**, applicant argues that claim 17 is not obvious in view of the cited references, and should be “allowable over Lerner in view of Joao for the same reasons as set forth above with respect to claim 1.” Examiner respectfully disagrees and asserts that in regards to Lerner, applicant also makes the same general

arguments found in claim 1 and are rejected for on the same grounds. In addition Examiner points out that applicant makes no argument for allowability, regarding claim 17, over the reference Joao. Thus Examiner maintains the originally stated grounds of rejection in regards to the reference Joao.

**As per claims 2, 6, 10, 14 and 18**, applicant makes the same general arguments found in independent claims 1, 5,9,13 and 17. Claims 2, 6, 10, 14, and 18 are dependent on independent claims 1, 5, 9, 13 and 17. In regards to the reference Lerner, Claims 2, 6, 10, 14, and 18 are rejected on the same grounds as previously stated for claims 1, 5, 9, 13 and 17. Applicant asserts that reference Joao fails to disclose or suggest the deficiencies of reference Lerner. Applicant's arguments in regard to secondary reference (i.e. Joao) have been fully considered but they are not persuasive.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAJIV J. RAJ whose telephone number is (571)270-3930. The examiner can normally be reached on Monday thru Friday 8-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571)272-6787. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rajiv J. Raj/, Art Unit 3626  
09/01/08

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Supervisory Patent Examiner  
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